IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9536 of 2004

Date of Decision : 29.8.2006.

Sukhminder Singh & others

....Petitioners

Versus

State of Punjab and others.

..Respondents

CORAM : HON'BLE MR. JUSTICE J.S.KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Parveen Kumar, Advocate,
for the petitioners.

Mr. Ashok Aggarwal, Addl. Advocate General, Punjab,
for the respondents.

J.S.Khehar, J. (Oral)

All the nine petitioners were appointed as Silt Observer/Supervisor Instrumentation / Photostat Operator / Wireless Operator / Wireless Operator / Surveyor / Driver, on work charged basis. Having rendered service on work charged basis for some time, they were regularized as Canal Patwaris at different places. The details of their induction into service culminating into their regularization as Canal Patwaris have been recorded in a tabulation form placed along with the petition as Annexure P-1. Relevant part of Annexure P-1 is being extracted hereunder:-

Sr. No.	Name of Employee	Father's Name	Designation	Date of Birth	Date of Workcharge appointment	Date of Regulariza-tion
1.	Sukhminder Singh	Harbhajan Singh	Silt Observer	10.10.60	23.5.85	4.4.2002

2. Ashwini Kumar	Hardar Singh	Supervisor Instrumation	5.4.66	1.9.85	13.5.2002
3. Avtar Singh	Naranjan Singh	Photostat Operator	10.11.64	1.2.88	23.4.2002
4. Ranbir Singh	Naranjan Singh	Wireless Operator	13.4.65	15.1.85 Beldar 5.10.89 Wireless Operator	21.3.2002
5. Balram Bagga	Sham Lal	Surveyor	7.7.68	24.10.86	20.5.2002
6. Suresh Kumar	Kuldip Singh	Supervisor	26.8.68	4.5.92	20.5.2002
7. Jasbir Singh	Joginder Singh	Driver	30.3.63	1.2.86	23.5.2002
8. Adarsh Pal	Gurdial Singh	Wireless Operator	28.12.59	15.4.87	23.4.2002
9. Ramji Dass	Bhagat Ram	Supervisor	1.4.54	7.1.85	15.5.2002"

The orders by which the petitioners were regularised as Canal Patwaris expressed similar terms and conditions. The order of regularization of petitioner No.1 as a Canal Patwari dated 4.4.2002 is being extracted hereunder, so as to highlight the terms and conditions expressed in the orders of their regularisation as Canal Patwaris:-

> "As per Punjab Government instructions No. 11/34/2001-4 Irr.Pro. 3/1301 dated 25.1.2001 and Memo No. 5/31/2001-3 Irr. Pro. 3/22836 dated 20.9.2001 and as recommended vide letter No. 239/28-A dated 2.4.2002, of Executive Engineer, Janodi Chohal Construction Division, Hoshiarpur services of Shri Sukhminder Singh, son of Shri Harbhajan Singh, Silt Observor (Work Charged) are regularized and he is appointed as a Canal Patwari on the vacant post of Canal Patwari in Executive Engineer, Kandi Watershed Drainage Division, Hoshiarpur under Dholbaha Dam Construction Circle, Hoshiarpur, with immediate effect in public interest in the pay scale of Rs.3120-

5160 on the starting salary of Rs.5320/-, on the following terms and conditions:-

1. The official will have to successfully complete 3 months training of canal Patwari.

2. During training the official will be entitled to his earlier pay along with allowances only.

3. In case any patent error is observed or if any other decision is taken by the Government against the placement, the appointing authority will have the right to withdraw this order at any time without assigning any reason.

4. The official will be deemed to be regularized from the date he joins duty on the post."

Consequent upon, their having been regularized for some time, the respondents passed identical orders reverting each of the petitioners to the post against which he was originally inducted into service on workcharged basis. The order of reversion of petitioner No.1 dated 11.6.2004 is being extracted hereunder, so as to highlight the reasons weighing with the respondents, if any, for reverting the petitioners:-

"In view of Civil Writ Petition No. 7512 of 2004 filed by Shri Anil Kumar, Value Operator and keeping in view the Seniority List of the work charged employees of the whole State, services of Sukhminder Singh, Canal Patwari whose services were regularized vide this office order No. 1992-97/10A dated 4.4.02 from the post of Silt Observor workcharged to Canal Patwari, the said office order is now hereby cancelled and according to the condition No.3 accepted by him, he is reverted back and

> appointed on the post of Silt Observor Work charged under Executive Engineer, Janodi Chohal Construction Division, Hoshiarpur, in public interest."

A perusal of the aforesaid order reveals that the instant order of reversion had been passed in furtherance of clause 3 depicted in the orders by which the petitioners were regularized (specimen already extracted herein above).

Despite the fact that no reasons have been spelt out in the impugned orders of reversions, yet in the written statement filed by the respondents, the reasons for deregularizing the petitioners and their consequential reversion have been extracted in paragraph 9 of the written statement. Paragraph 9 of the written statement is being extracted hereunder:-

> "9. That in reply to para 9 of the writ petition it is submitted that so far as the reproduction of Clause 4 of the Annexure P/2 and Annexure P/10 are concerned, this is perfectly valid and amply clear. Patent error has come to the notice of the respondents i.e. regularization orders issued by the authority not competent to issue, petitioners have much juniors in the state level seniority list hence regularization orders of the petitioner is prejudice to the claim of the persons seniors to them. Thirdly they have been regularized in a cadre out side of their cadre and these are patent errors and as such their services have been deregularized."

Viewed in the factual position noticed herein above, learned counsel for the petitioners seeks to challenge the reversion orders, all dated

11.6.2004 (Annexures P/20 to P/28), vide which the orders of regularization of the petitioners were annulled and they were reverted to the post against which they were originally recruited into service, by asserting that they had been passed in clear violation of Article 311(2) of the Constitution of India as well as, in clear violation of the rules of natural justice. In this behalf it is submitted, that the respondents were required to afford an opportunity of hearing to the petitioners, after having informed the petitioners the reasons for deregularisation of their services as Canal Patwaris, as well as, the reasons for reverting them to the post originally occupied by them. It is the vehement contention of the learned counsel for the petitioners, that no such procedure was adopted by the respondents before passing the impugned orders.

Having examined the entire controversy, in totality of the facts narrated herein above, including clause 3 of the regularisation order, as well as, the reasons recorded for reverting the petitioners depicted in para 9 of the written statement, we are satisfied that the impugned orders by which the status of regularisation accorded to the petitioners has been withdrawn, and by which, they have been reverted to the post originally occupied by them in a work charged capacity, adversely affects the civil rights to the petitioners. In such a situation, it was imperative for the respondents to follow the procedure laid down under Article 311(2) of the Constitution of India, as also, the rules of natural justice. Admittedly, no such procedure was followed by the respondents.

In view of the above, we are of the view that the impugned orders, all dated 11.6.2004, (Annexures P/20 to P/28) are liable to be set aside. The same are, accordingly, set aside. Liberty is, however, granted to

the respondents to pass appropriate orders, if the respondents be so advised, by following the procedure envisaged under Article 311(2) of the Constitution of India, as well as, the rules of natural justice, in accordance with law.

Allowed in the aforesaid terms.

(J.S. Khehar)
Judge

August 29, 2006
vkd

(S.D. Anand)
Judge